



# NOTICE OF PUBLIC HEARING

2006-JUL-06 at 7:00 pm

Notice is hereby given that a Public Hearing will be held on Thursday, **2006-JUL-06**, commencing at **1900 hours (7:00 pm)** in the **Board Chambers of the Regional District of Nanaimo, 6300 Hammond Bay Road, Nanaimo, BC** to consider proposed amendments to the City of Nanaimo "ZONING BYLAW 1993 NO. 4000".

## 1. **BYLAW NO. 4000.393:**

**Purpose:** To permit use of land for a small lot single family residential subdivision and multiple family townhouse development.

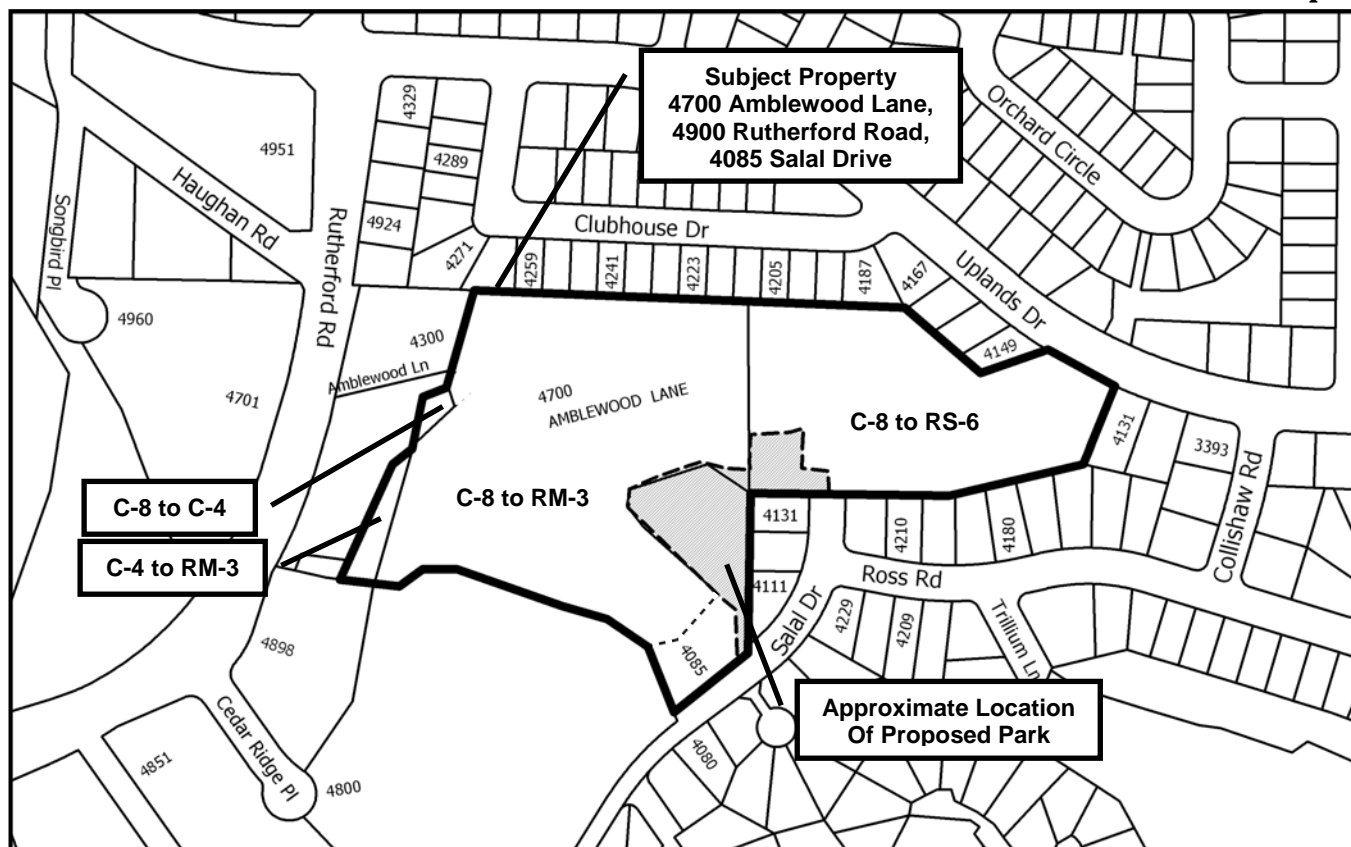
**Location(s):** 4700 Ambleswood Lane, 4900 Rutherford Road and 4085 Salal Drive

**File No.:** RA161

This bylaw, if adopted, will rezone property from Mixed Use Commercial Zone (C-4) and Commercial Recreation Zone (C-8) to Low Density Multiple Family Residential (Townhouse) Zone (RM-3), Single Family Residential Small Lot Zone (RS-6) and Mixed Use Commercial Zone (C-4) in order to permit a small lot single family residential subdivision, with access provided solely from Uplands Drive, and a multiple family townhouse unit development, with access provided from Rutherford Road. Under the proposed zoning, uses may include single family dwellings, multiple family dwellings, and secondary suites. As part of this application, the applicant is also proposing to discharge the existing restrictive covenant (EJ135254) registered to the title of the property at 4700 Ambleswood Lane, which limits the use of the property to 'golf course'.

The subject property is legally described as part of LOT B, DISTRICT LOT 17, WELLINGTON DISTRICT, PLAN VIP62511 (4900 Rutherford Road), part of LOT C, DISTRICT LOT 17, WELLINGTON DISTRICT, PLAN VIP62511 (4700 Ambleswood Lane), and LOT D, DISTRICT LOT 17, WELLINGTON DISTRICT, PLAN VIP62511 (4085 Salal Drive), and is shown on Map 'A'.

**Map A**



## 2. BYLAW NO. 4000.394:

**Purpose:** To permit use of land for siting of heat pumps and central air conditioning units.

**Location(s):** Various

**File No.:** 3900 30 ZA1 76

This bylaw, if adopted, will amend the City of Nanaimo "ZONING BYLAW 1993 NO. 4000":

1. By deleting the existing Part 5 General Regulations that permit heat pumps and air conditioners to project into side and rear yard setbacks.
2. By adding a new subsection to the Part 5 General Regulations that require heat pumps and central air conditioning units to be located to the rear of a principal building and not be closer than 4.5 metres (14.7 feet) from side lot lines or 3.0 metres (9.8 feet) from the rear property line.

## 3. COVENANT AMENDMENT:

**Purpose:** To permit use of land for a multiple family dwelling (townhouse) development.

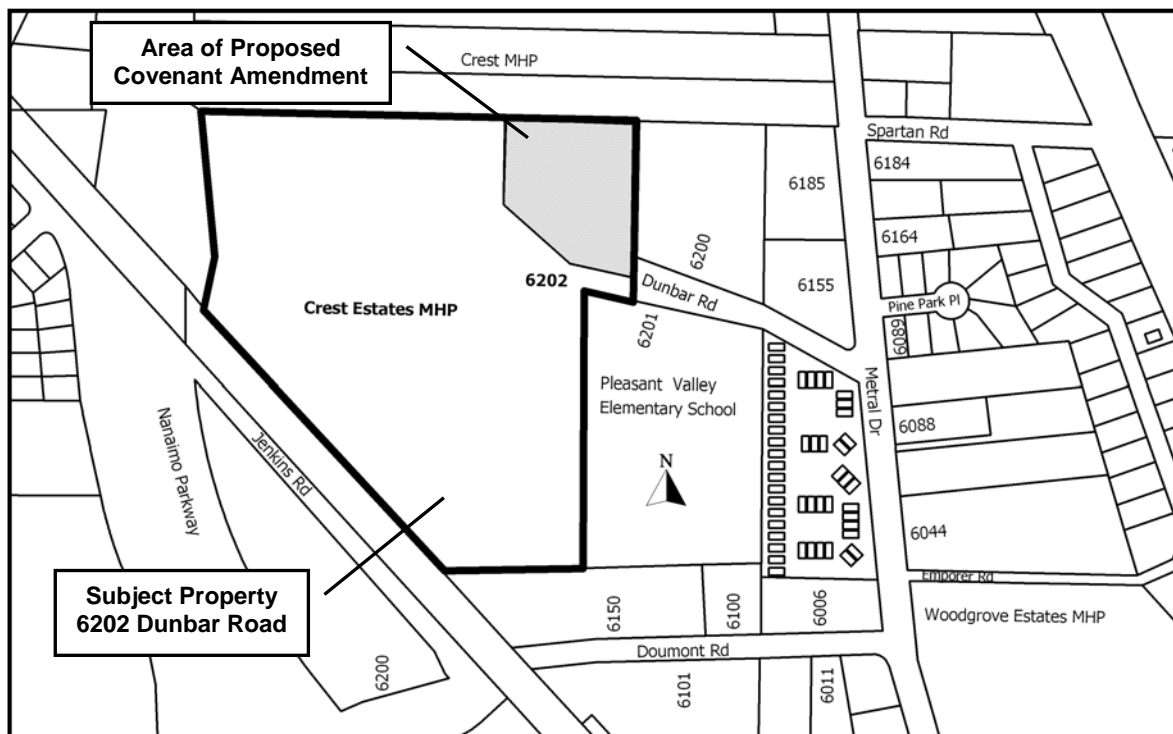
**Location(s):** 6202 Dunbar Road

**File No.:** RA165

An application has been received to amend an existing covenant (EJ059424) registered on the title of the subject property located at 6202 Dunbar Road. If approved, the covenant amendment would: increase the existing permitted number of townhouse dwelling units from 27 to 30; increase lot coverage from 21% to 40% (permitted by Zoning Bylaw No. 4000); and remove requirements for constructing an on-site recreation building and instead provide a \$30,000 monetary contribution toward the Oliver Road Recreation Centre.

The subject property is legally described as PARCEL B (DD 9906-N), SECTION 10, WELLINGTON DISTRICT, EXCEPT PARCEL NO. 1 (DD 42751-N) AND EXCEPT THOSE PARTS IN PLANS 6576, 12317, 22934, AND VIP62892, and is shown on Map 'B'.

**Map B**



PLEASE NOTE full details of the above-noted bylaws and covenant amendment are available at the City of Nanaimo Development Services Department, located at 238 Franklyn Street.

This Notice is published in accordance with Section 892 of the Local Government Act.  
Notice Given by General Manager, Administrative Services

The above bylaws, relevant staff reports, and other background information may be inspected from 2006-JUN-23 to 2006-JUL-06, between 8:00 am and 4:30 pm, Monday through Friday, excluding statutory holidays, in the offices of the Development Services Department, 238 Franklyn Street, Nanaimo, BC.

All persons who believe their interest in property is affected by the proposed bylaws shall be afforded the opportunity to be heard in person, by a representative or by written submission, on the matters contained within Bylaws No. 4000.393, 4000.394, and the covenant amendment at the Public Hearing.

***Please note the following:***

Written submissions may be sent to the City of Nanaimo, Development Services Department, 455 Wallace Street, Nanaimo, BC V9R 5J6.

Electronic submissions (email) should be sent to **public.hearing@nanaimo.ca**, or submitted online at **www.nanaimo.ca**. These submissions must be received no later than 4:00 pm, 2006-JUL-06, to ensure their availability to Council at the public hearing.

Following the close of a public hearing, no further submissions or comments from the public or interested persons can be accepted by members of City Council, as established by provincial case law. This is necessary to ensure a fair public hearing process and provide a reasonable opportunity for people to respond.

**For more information, please contact the City of Nanaimo Development Services Department  
Phone: (250) 755-4429 ♦ Fax: (250) 755-4439 ♦ Website [www.nanaimo.ca](http://www.nanaimo.ca)  
238 Franklyn Street, Nanaimo, BC V9R 5J6**

CITY OF NANAIMO

BYLAW NO. 4000.393

A BYLAW TO AMEND THE CITY OF NANAIMO "ZONING BYLAW 1993 NO. 4000"

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WHEREAS the Council may zone land, by bylaw, pursuant to Sections 890, 891, 903 and 904 of the *Local Government Act*;

THEREFORE BE IT RESOLVED the Municipal Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.393".
2. The City of Nanaimo "ZONING BYLAW 1993 NO. 4000" is hereby amended as follows:

By rezoning part of lands shown on the attached Schedule 'A' and legally described as LOT B, DISTRICT LOT 17, WELLINGTON DISTRICT, PLAN VIP62511 from Commercial Recreation Zone (C-8) to Mixed Use Commercial Zone (C-4) and Low Density Multiple Family Residential (Townhouse) Zone (RM-3).

3. The City of Nanaimo "ZONING BYLAW 1993 NO. 4000" is hereby amended as follows:

By rezoning lands shown on attached Schedule 'A' and legally described as LOT C, DISTRICT LOT 17, WELLINGTON DISTRICT, PLAN VIP62511 from Commercial Recreation Zone (C-8) and Mixed Use Commercial Zone (C-4) to Low Density Multiple Family Residential (Townhouse) Zone (RM-3) and Single Family Residential Small Lot Zone (RS-6)

PASSED FIRST AND SECOND READINGS 2006-JUN-12.

PUBLIC HEARING HELD \_\_\_\_\_.

PASSED THIRD READING \_\_\_\_\_.

MOT APPROVED \_\_\_\_\_.

COVENANT REGISTERED \_\_\_\_\_.

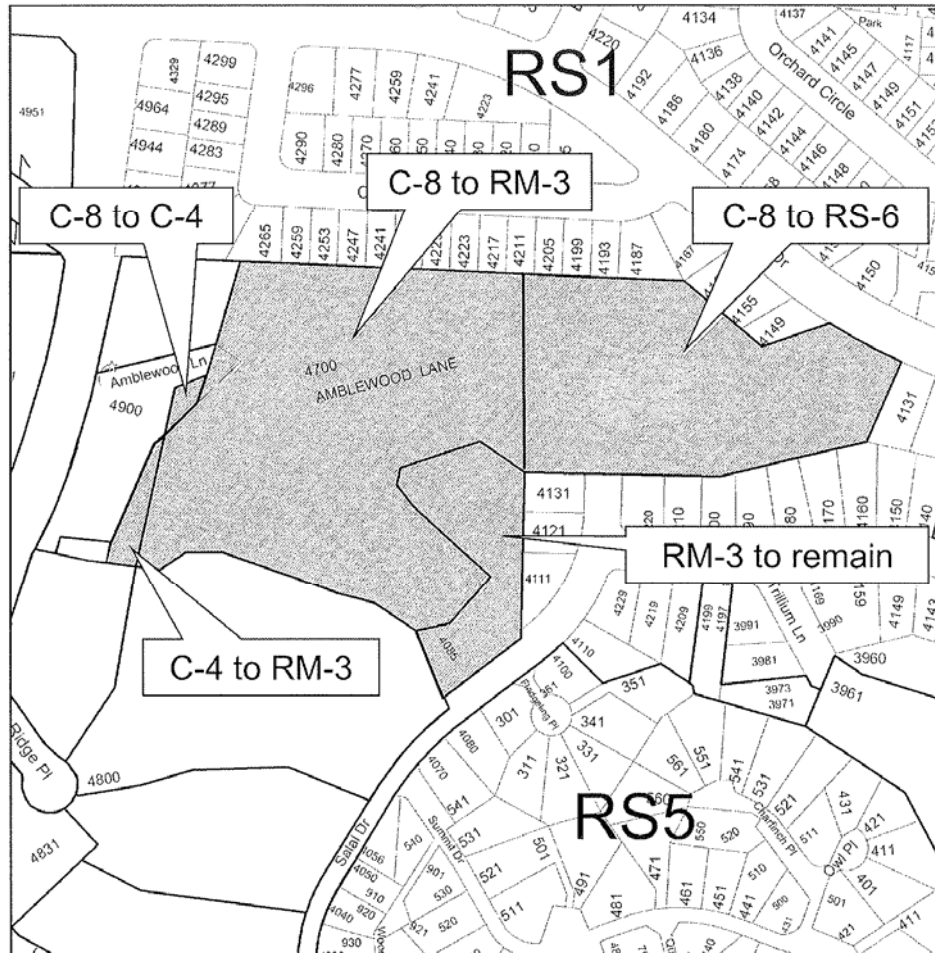
ADOPTED \_\_\_\_\_.

File: RA000161


Address: 4700 Ambleswood Lane, 4900 Rutherford Road, 4085 Salal Drive

Applicant: Keith Brown and Associates

SCHEDULE A



Civic : 4700 Amblerwood Lane, 4085 Salal Drive  
and 4900 Rutherford Road  
File : RA000161

 **SUBJECT  
PROPERTY**



( ) RA161 - 4700 Ambleswood Lane, 4085 Salal Drive and a portion of 4900 Rutherford

The City of Nanaimo has received an application from Keith Brown and Associates, on behalf of Hotel Nanaimo Holdings and Ambleswood Developments, to rezone portions of 4900 Rutherford Road, 4700 Ambleswood Lane and 4085 Salal Drive from Low Density Multiple Family Residential (Townhouse) Zone (RM-3), Mixed-Use Commercial Zone (C-4) and Commercial Recreation Zone (C-8) to Low Density Multiple Family Residential (Townhouse) Zone (RM-3), Single-Family Residential Small Lot Zone (RS-6) and Mixed-Use Commercial Zone (C-4), in order to permit development of 18 single-family residential small lots and 68 multi-family townhouse units.

The subject properties are the site of the old Rutherford Par Three Golf Course, which was originally developed under Land Use Contract (LUC 1708). Through a previous rezoning (RA92-38) application and subsequent subdivision, the LUC was discharged from the subject properties and a covenant was registered on title to 4700 Ambleswood Lane, limiting the use of the property to 'golf course'. Due to market conditions, the golf course and related facilities have been closed for the past 7 years.

The application has been reviewed by Staff and the Rezoning Advisory Committee (RAC) and is now ready for Council's consideration.

The subject properties are designated as "Rutherford Town Centre" according to Schedule 'A' of the Official Community Plan (OCP) and form part of the Transition District between the Town Centre core and adjacent low density single-family neighbourhoods. OCP policy supports residential densities of up to 50 units per hectare (20 units per acre) within Transition Districts and encourages a mix of housing forms ranging from single-family dwellings up to three to four storey apartment complexes. Staff is of the opinion that the proposed rezoning application complies with the intent of the OCP.

The subject properties are bordered by an established single-family neighbourhood to the north. These properties are currently governed under Land Use Contract (LUC 1708), which permitted residential lot sizes of 5000 ft<sup>2</sup> for those neighbouring lots fronting between 4193 and 4259 Clubhouse Drive. Given the smaller lot sizes and the presence of the previously operating golf course at the rear of these properties, dwellings constructed on these lots were sited closer towards the rear property line and have limited rear yards.

The applicants have proposed to register a six-metre easement along the northerly portion of 4700 Ambleswood Lane in favour of the neighbouring lots fronting Clubhouse Drive and to install, at their expense, a six-foot cedar fence along the entire length of the easement. Staff recommend a covenant be registered to secure installation of fencing, vegetation protection and the six-metre easement with all adjacent property owners whom are willing to be party to the easement.

The applicants have proposed, in exchange for discharging the golf course covenant on 4700 Ambleswood Lane, to dedicate, as park, a densely treed rock outcrop at 4085 Salal Drive, which is currently zoned for a 12 unit townhouse development, and to construct a three-metre pedestrian trail around the proposed park.

It is Staff's belief that this area of park dedication is of significant environmental value and that the additional open space and pedestrian trailway provided through the development, will allow for greater recreational opportunities, as opposed to the existing privately owned and non-operational golf-course. Staff recommend that this covenant be discharged from title.

Given the proposed change in land use and discharge of the above-noted covenant, Staff recommend that Council secure the general design of the proposed small lot single-family subdivision and siting of the multi-family development. This will include limiting development on the lands to no more than 18 single-family lots and 68 town home dwelling units.

As outlined in Section 6.2 of the OCP, in exchange for value conferred on land through rezoning, the applicants should provide a community contribution. In response to this policy, the applicant is proposing to provide a monetary contribution of \$43,000 (\$500 per unit) towards playground equipment in the proposed neighbourhood park; this monetary contribution is in addition to the park dedication and trail construction noted above.

Staff support this community contribution proposal and recommend that these items be secured as a condition of rezoning.

The Rezoning Advisory Committee (RAC), at its meeting of 2006-MAY-04, recommended that the application be approved as presented. Staff concur with RAC's recommendation and support this application.

Recommendation: That Council support this application and;

1. Give First and Second reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.393";
2. Direct Staff to secure the proposed community contribution, rear yard setbacks, six-metre easement, fencing standards and installation, building design guidelines, on-site storm drainage, erosion control and sediment plan, and the general design of the proposed subdivision plan; and
3. Direct Staff to discharge Covenant Charge EJ135254.

2006-JUN-12

## FOR CITY MANAGER'S REPORT

TO: A. TUCKER, ACTING DIRECTOR, PLANNING AND DEVELOPMENT, DSD

FROM: D. LINDSAY, MANAGER, PLANNING DIVISION, DSD

RE: RA161 – 4900 RUTHERFORD ROAD, 4700 AMBLEWOOD LANE AND  
4085 SALAL DRIVE

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### RECOMMENDATION:

That Council support this application and;

1. Give First and Second reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.393";
2. Direct Staff to secure the proposed community contribution, rear yard setbacks, six-metre easement, fencing standards and installation, building design guidelines, on-site storm drainage, erosion control and sediment plan, and the general design of the proposed subdivision plan; and
3. Direct Staff to discharge Covenant Charge EJ135254.

### BACKGROUND:

The City of Nanaimo has received an application from Keith Brown and Associates, on behalf of Hotel Nanaimo Holdings and Ambleswood Developments, to rezone portions of 4900 Rutherford Road, 4700 Ambleswood Lane and 4085 Salal Drive from Low Density Multiple Family Residential (Townhouse) Zone (RM-3), Mixed-Use Commercial Zone (C-4) and Commercial Recreation Zone (C-8) to Low Density Multiple Family Residential (Townhouse) Zone (RM-3), Single-Family Residential Small Lot Zone (RS-6) and Mixed-Use Commercial Zone (C-4), in order to develop a small lot single-family subdivision and multi-family townhouse development.

The subject properties are the site of the old Rutherford Par Three Golf Course, which was originally developed under Land Use Contract (LUC 1708). Through a previous rezoning (RA92-38) application and subsequent subdivision, the LUC was discharged from the subject properties and a covenant was registered on title to 4700 Ambleswood Lane, limiting the use of the property to 'golf course'. Due to market conditions, the golf course and related facilities have been closed for the past 7 years.

The application has been reviewed by Staff and the Rezoning Advisory Committee (RAC) and is now ready for Council's consideration.

### DISCUSSION:

#### ***Subject Property***

The subject properties, which have a civic address of 4900 Rutherford Road, 4085 Salal Drive and 4700 Ambleswood Lane, are currently vacant and are approximately 0.48 hectares (1.2 acres), 0.53 hectares (1.3 acres), and 4.16 hectares (11.39 acres) in area, respectively (Schedule 'A').



The subject site is bordered by existing single-family neighbourhoods to the north and east, by vacant low and medium density residential zoned properties to the south, and by Rutherford Road to the west. Beyond Rutherford Road lies vacant low density residentially zoned property and Rutherford Mall.

### ***Official Community Plan***

The subject properties are designated as “Rutherford Town Centre” according to Schedule ‘A’ of the Official Community Plan (OCP). The subject properties form part of the Transition District of the Town Centre, radiating from the core (Rutherford Mall), and providing a transition to adjacent low density single-family neighbourhoods. OCP policy supports residential densities of up to 50 units per hectare (20 units per acre) within Transition Districts and encourages a mix of housing forms ranging from single-family dwellings to three to four storey apartment complexes.

Staff is of the opinion that the proposed rezoning application complies with the intent of the OCP.

### ***Proposed Development***

The applicants are proposing to rezone portions of the subject properties in order to permit development of 18 single-family residential small lots and 68 multi-family townhouse units (Schedule ‘B’).

The easterly portion of 4700 Ambleswood Lane, approximately 1.52 hectares (3.76 acres), is proposed to be rezoned from C-8 to RS-6 in order to facilitate the subdivision of the 18 single-family lots. Access to the subdivision is proposed to be provided solely from Uplands Drive.

The 68-unit multi-family townhouse development is proposed to be located over the westerly portion of the site, with access provided solely from Rutherford Road via a reciprocal access agreement with 4300 Ambleswood Lane and 4900 Rutherford Road. The townhouse site will be comprised of approximately 2.93 hectares (7.24 acres) of 4700 Ambleswood Lane, proposed to be rezoned from C-8 and C-4 to RM-3, approximately 247 m<sup>2</sup> (2,659 ft<sup>2</sup>) of 4900 Rutherford Road, proposed to be rezoned from C-8 to RM-3, and approximately 0.18 hectares (0.44 acres) of existing RM-3 zoned property at 4085 Salal Drive. A subdivision application to consolidate these properties will be required pending successful completion of the rezoning. The proposed development complies with the density, lot coverage, open space and parking requirements of the RM-3 Zone.

In addition to the above amendments, a portion of 4900 Rutherford Road is also proposed to be rezoned from C-8 to C-4 in order to eliminate the existing split zoning designation on the property.

As part of the development the applicants have also proposed a six-metre easement along the northerly portion of 4700 Ambleswood Lane, adjacent to those single-family lots fronting Clubhouse Drive. The proposed development will also include dedication of approximately 0.44 hectares (1.09 acres) of parkland dedication, which calculates to approximately 9.3% of the total site area.

### ***Easement***

As previously noted, the subject properties are bordered by an established single-family neighbourhoods to the north. These properties are currently governed under Land Use Contract (LUC 1708), which permitted residential lot sizes of 5000 ft<sup>2</sup> for those neighbouring lots fronting between 4193 and 4259 Clubhouse Drive.

Given the smaller lot sizes and the presence of the previously operating golf course at the rear of these properties, dwellings constructed on these lots were sited closer towards the rear property line and have limited rear yards.

In an effort to provide additional yard separation and open space between the two neighbouring developments and to reduce possible future conflicts between properties, the applicants have thus proposed to register a six-metre easement in favour of the neighbouring lots fronting Clubhouse Drive. The applicants have also indicated that they will install, at their full expense, a six-foot cedar fence along the entire length of the southern boundary of the easement, and to also extend the fencing along each of the neighbouring properties interior lot lines through to the southern easement boundary, in similar fencing materials that are existing at this time.

The easement, as proposed, will allow adjacent property owners to utilize this additional area, approximately 91.4 m<sup>2</sup> (984 ft<sup>2</sup>), for their personal use and enjoyment. The applicant has stated that uses in the easement area will however be limited to non-building type uses including, but not limited to, barbeques, playground equipment, landscaping, ground-level patios, and wood or metal sheds that do not exceed 10 m<sup>2</sup> (107.6 ft<sup>2</sup>) in total area.

Staff recommend that a covenant be registered which restricts development of the lands until such time as the proposed six-metre easement has been registered with all adjacent property owners whom are willing to be party to the easement. Also, Staff recommend that a covenant be registered which secures the six-foot cedar fence along the easement boundary and extension of existing fencing along the adjacent interior lot lines, and requires installation of the fence prior to development of the site.

In addition to the six-metre easement, a vegetation covenant is proposed along the boundary of the proposed access to the subdivision which will provide a buffer to the existing property at 4149 Uplands Drive. A good neighbour fence is also proposed to be constructed along the rear property line of proposed lots 1 to 11. Staff recommend that Council secure the proposed vegetation covenant area and good neighbour fence as a condition of rezoning.

### ***Covenant Discharge***

As noted above, 4700 Ambleswood Lane is the site of the old Rutherford Par Three Golf Course and as a condition of a previous subdivision application (SD2062) a covenant was registered on title which restricts the use of land, in perpetuity, to a nine-hole public golf course (Schedule 'C'). In order to permit future residential development on the land, the covenant must be discharged from title.

The applicants have proposed, in response to the loss of open space resulting from the discharge of the covenant, to dedicate, as park, a densely treed rock outcrop at 4085 Salal Drive, which, under existing zoning, is subject to development of 12 multifamily units. In addition, the applicants have proposed to construct a three-metre pedestrian trail (\$12,000) which surrounds the boundary of the proposed park.

It is Staff's belief that this area of park dedication is of significant environmental value and that the additional open space and pedestrian trailway provided through the development, will allow for greater recreational opportunities, as opposed to the existing privately owned and non-operational golf-course.

Staff recommend that this covenant be discharged from title.

### ***Subdivision Plan***

Given the proposed change in land use and discharge of the above-noted covenant, Staff recommend that Council secure the general design of the proposed small lot single-family subdivision and siting of the multi-family development. This will include limiting development on the lands to no more than 18 single-family lots and 68 town home dwelling units.

### ***Rear Lot Setbacks***

As the proposed six-metre easement noted above will technically function as a rear yard for the adjacent single-family lots fronting along Clubhouse Drive, and in an effort to ensure that adequate yard separation and open space is provided between adjacent developments, Staff recommend that a covenant be registered as a condition of rezoning which requires that the rear yard setback requirements be measured from the southern boundary of the six-metre easement.

Consequently, the RS-6 lots will require a setback, as measured from the rear property line, of not less than 12 metres (39.37 feet) for a principal building (six-metre easement area plus six-metre setback) and not less than 7.5 metres (24.60 feet) for an accessory building (six-metre easement plus 1.5 metre setback). The side yard setback of the RM-3 zoned portion, as measured from the rear property line, will not be less than 9 metres (29.53 feet) (six-metre easement plus required three-metre setback).

### ***Design Principals***

The most significant design feature impacting the streetscape of small lot single-family developments is the location and siting of off-street parking.

In an effort to reduce these associated impacts, assist in providing a greater mix of housing forms into the neighbourhood, and to create a stronger, more pedestrian friendly residential streetscape, staff recommend that a covenant be registered as a condition of rezoning which secure the following design guidelines:

- ☐ The garage component shall not cover 55% or more of the front building façade;
- ☐ Garages shall be setback from the principal building by a minimum of four feet; and
- ☐ Double-width garage doors shall not be permitted on any lot, although double-car garages are permitted.

### ***Erosion and Sediment Control Program***

Given the topography of the lands and in order to ensure adequate protection of the on-site watercourse at 4700 Amblerwood Lane, Staff recommend that a covenant be registered as a condition of rezoning which restricts any re-grading, vegetation removal or development of the site, until such time as an erosion and sediment control program and grading plan has been submitted and approved.

### ***Storm Drainage***

Given that the proposed development will result in an increase in the amount of impervious material on-site and, consequently an increase in storm water flows, and as the flows are tributary Long Lake, Staff recommend that a covenant be registered which ensures storm water flows are maintained at, or below, predevelopment levels.

### ***Community Contribution***

As outlined in Section 6.2 of the OCP, in exchange for value conferred on land through rezoning, the applicants should provide a community contribution.

In response to this policy, the applicant is proposing to provide a monetary contribution of \$43,000 (\$500 per unit) towards playground equipment in the proposed neighbourhood park; this monetary contribution is in addition to the park dedication and trail construction noted above.

Staff support this community contribution proposal and recommend that these items be secured as a condition of rezoning.

REZONING ADVISORY COMMITTEE (RAC)

The Rezoning Advisory Committee (RAC), at its meeting of 2006-MAY-04, recommended that the application be approved as presented. Staff concur with RAC's recommendation and support this application.

RECOMMENDATION:

That Council support this application and;

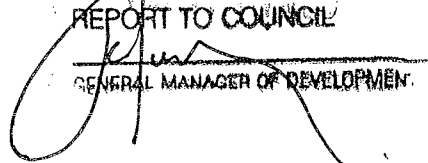
1. Give First and Second reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.393";
2. Direct Staff to secure the proposed community contribution, rear yard setbacks, six-metre easement, fencing standards and installation, building design guidelines, on-site storm drainage, erosion control and sediment plan, and the general design of the proposed subdivision plan; and
3. Direct Staff to discharge Covenant Charge EJ135254.

Respectfully submitted,

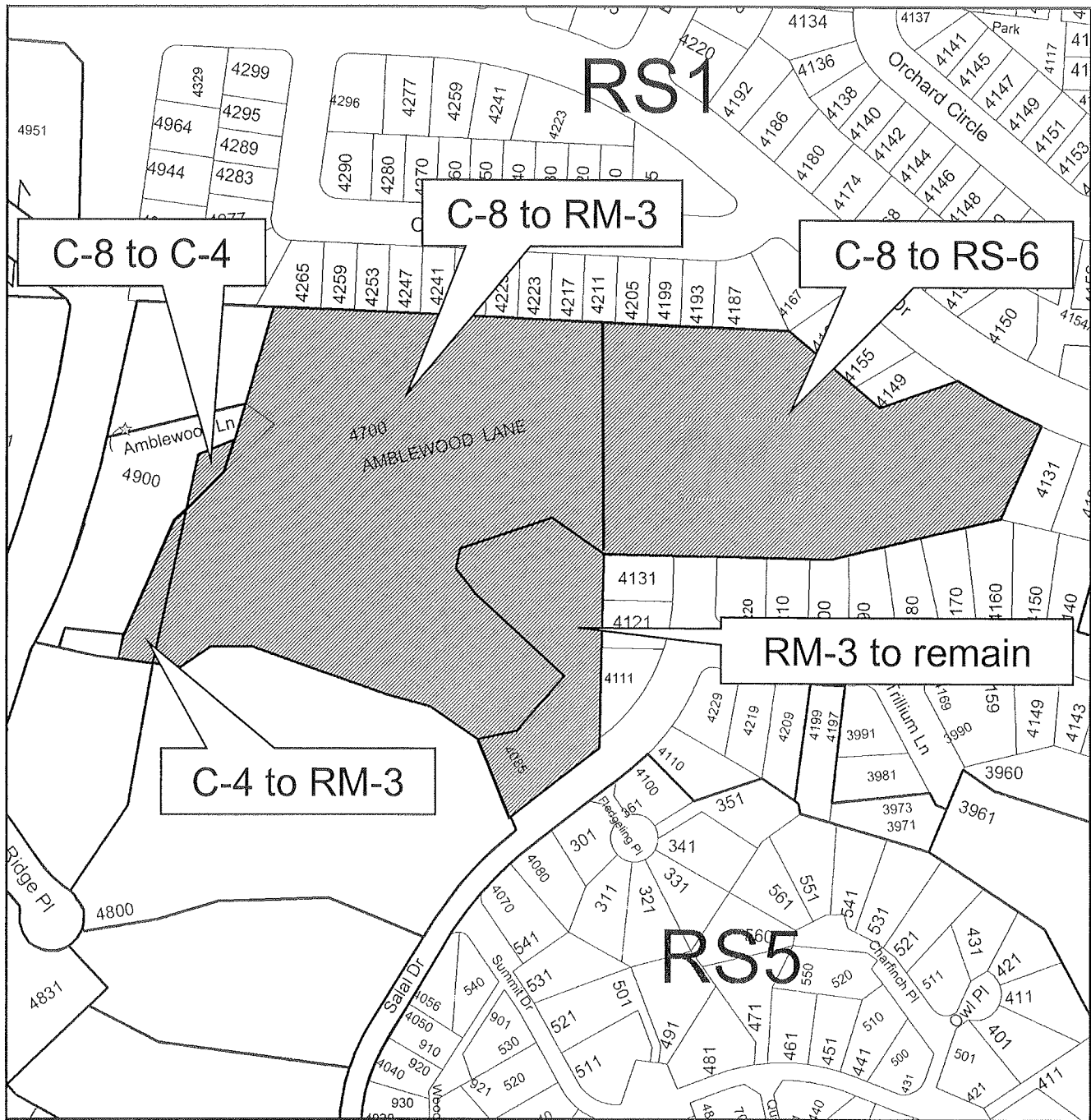
  
D. Lindsay  
Manager, Planning Division  
**DEVELOPMENT SERVICES DEPARTMENT**

  
A. Tucker  
Acting Director, Planning & Development  
**DEVELOPMENT SERVICES DEPARTMENT**

JC/pm  
Council: 2006-JUN-12  
Prospero Attachment: RA161

To: CITY MANAGER  
FORWARDED FOR CITY MANAGER'S  
REPORT TO COUNCIL  
  
GENERAL MANAGER OF DEVELOPMENT

# SCHEDULE A



Civic : 4700 Amblerwood Lane, 4085 Salal Drive  
and 4900 Rutherford Road  
File : RA000161

 **SUBJECT  
PROPERTY**



  
**PROPOSED SITE PLAN**  
SCALE 1:500m  
JUNE 1, 2000

BUILDINGS		
BLOCKS 'A, B, D, E'	1 STOREY DUPLEX PATIO HOMES	(4 X 2 UNITS = 8 UNITS)
BLOCK 'C'	1 STOREY FOURPLEX PATIO HOME	(1 X 4 UNITS = 4 UNITS)
BLOCKS 'F' to 'N'	1 1/2 STOREY FOURPLEX TOWNHOMES	(9 X 4 UNITS = 36 UNITS)
BLOCKS 'O' to 'S'	2 STOREY FOURPLEXES	(5 X 4 UNITS = 20 UNITS)
		68 UNITS
LOTS 1 THRU 18		
18 SINGLE FAMILY LOTS		(18 X 1 = 18 AVAILABLE LOTS)
		86 RESIDENCES

**RECEIVED**  
JUN 20 2006  
**AMBLEWOOD VILLAGE**  
NANAIMO BC  
CITY OF NANAIMO  
DEVELOPMENT SERVICES





# SCHEDULE C

REGISTERED VIEJ135255

053038 2004-10-01-10.21.40.898419


Page 3 of 6 pages

## GENERAL INSTRUMENT - PART 2

### WHEREAS:

- A. The Grantor is the registered owner in fee simple of:
- Lot 1, District Lot 17, Wellington District, Plan 32491 except part in Plan 37954  
(hereinafter called the "Land") ✓
- B. The Grantee is The City of Nanaimo.
- C. The Grantor has voluntarily agreed to preserve those portions of lands which are presently used as a public golf course.

NOW THEREFORE, in consideration of the payment of One (\$1.00) Dollar from the Grantee to the Grantor, the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree with the other as follows:

- 
1. The Grantor covenants and agrees with the Grantee that the land designated as a nine hole public golf course now existing on the land described as Lot C of the proposed subdivision as shown on the Plan attached hereto as Schedule "A" shall be retained, maintained and used as a nine hole public golf course with a minimum length of 850 yards in perpetuity.
  2. The Grantor covenants and agrees to indemnify and save harmless the Grantee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have and to reimburse the Grantee from any expense that might be incurred by the Grantee as a result of a breach of a covenant under this agreement.
  3. The Grantor and Grantee agree that the enforcement of this agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title of the Land shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this agreement.
  4. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the said Lands as if the agreement had not been executed and delivered by the Grantor.
- See V/P 62512*

CITY OF NANAIMO

BYLAW NO. 4000.394

A BYLAW TO AMEND THE CITY OF NANAIMO "ZONING BYLAW 1993 NO. 4000"

---

WHEREAS the Council may zone land, by bylaw, pursuant to Sections 890, 891 and 903 of the *Local Government Act*;

THEREFORE BE IT RESOLVED the Municipal Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.394".
2. The City of Nanaimo "ZONING BYLAW 1993 NO. 4000" is hereby amended as follows:

- (1) By deleting the following conditions for Air Conditioners / Heat Pumps from Subsection 5.4.1. (projections into yards):

Feature	Permitted in a required yard setback			Conditions
	Front	Side	Rear	
Air Conditioners / Heat Pumps	No	Yes	Yes	None

- (2) By adding Subsection 5.5.8. as the following:

Heat pumps and central air conditioning units must be located to the rear of a principal building and shall not be closer than 4.5 metres (14.7 feet) from the side lot lines or 3.0 metres (9.8 feet) from the rear property line.

PASSED FIRST AND SECOND READINGS 2006-JUN-12.

PUBLIC HEARING HELD \_\_\_\_\_.

PASSED THIRD READING \_\_\_\_\_.

APPROVED BY MINISTRY OF TRANSPORTATION \_\_\_\_\_.

ADOPTED \_\_\_\_\_.

( ) Siting of Heat Pumps

Council, at its regular meeting of 2006-MAY-29 received a report regarding noise abatement options for heat pumps. At the meeting, Council directed Staff to prepare a Zoning Amendment Bylaw that would further regulate the siting of these units.

The purpose of the amendment is to mitigate the impact of noise generated from heat pumps in residential neighbourhoods. The proposed amendment is based on previous discussions with Council regarding the potential of siting these units in the centre of the rear yard while providing some flexibility to the homeowner.

Heat pumps and central air conditioning units include exterior compressors which are often sited on the side or rear of a home. At present, the Zoning Bylaw permits a heat pump or air conditioning unit to be sited anywhere within the building envelope and as a permitted projection up to 0.75 metres (2.5 feet) into a side yard or 2 metres (6.6 feet) into a rear yard (Schedule 'A'). As a result, a heat pump or air conditioning unit can be as close as 2.25 metres (7.4 feet) to a neighbouring home. These regulations have been in place since 1993 with the adoption of the current Zoning Bylaw. Although not specifically mentioned in the previous Zoning Bylaw (1982 – 1993) the bylaw did include an ability to have general projections into yard areas and could have been interpreted to include heat pumps or central air conditioning units.

In response to Council's direction, Staff has prepared a Zoning Bylaw Amendment Bylaw which, if adopted, will increase the required setback in side yards from 0.75 metres (2.5 feet) to 4.5 metres (14.76 feet). The Amendment Bylaw will also require the units to be placed to the rear of the home. In response to this more restrictive siting, the Bylaw will also permit greater flexibility in the siting of these units in the rear yard by allowing the units to be sited 3 metres (9.8 feet) from the rear property line (Schedule 'A').

This amendment will require any new heat pump or central air conditioning unit to be a minimum of 4.5 metres (14.76 feet) from a neighbouring home and 6 metres (19.7 feet) in the majority of situations.

If adopted, the revised Bylaw will apply only to the siting of new heat pumps or central air conditioning units. As these units do not require building permits, the owners / installers will be responsible to familiarize themselves with the Bylaw requirements, similar to fences or small accessory buildings. As previously directed by Council, Staff will be completing a community education program to educate suppliers, installers, builders and home owners regarding the siting of heat pumps and methods to minimize noise.

As per Council's policy, Staff will respond only to complaints regarding new, incorrectly sited units. Owners who have installed a unit which does not comply with the zoning setbacks, or those applicants who wish to install a unit within the required setbacks, can apply to the Board of Variance. The Board can legalize or permit a unit where, in its opinion, the Bylaw creates an undue hardship for the applicant.

If Council gives First and Second Reading to the proposed Amendment Bylaw, the item will be forwarded to the next available Public Hearing in order to receive input from the community.

Recommendation: That Council give First and Second Reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.394".

## FOR CITY MANAGER'S REPORT

REPORT TO: A. TUCKER, ACTING DIRECTOR, PLANNING & DEVELOPMENT, DSD

FROM: D. LINDSAY, MANAGER, PLANNING DIVISION, DSD

RE: SITING OF HEAT PUMPS

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### RECOMMENDATION:

That Council give First and Second Reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.394".

### BACKGROUND:

Council, at its regular meeting of 2006-MAY-29 received a report regarding noise abatement options for heat pumps. At the meeting, Council directed Staff to prepare a Zoning Amendment Bylaw that would further regulate the siting of these units.

The purpose of the amendment is to mitigate the impact of noise generated from heat pumps in residential neighbourhoods. The proposed amendment is based on previous discussions with Council regarding the potential of siting these units in the centre of rear yard while providing some flexibility to the homeowner.

### DISCUSSION:

#### ***Existing Regulations***

Heat pumps and central air conditioning units include exterior compressors which are often sited on the side or rear of a home. At present, the Zoning Bylaw permits a heat pump or air conditioning unit to be sited anywhere within the building envelope and as a permitted projection up to 0.75 metres (2.5 feet) into a side yard or 2 metres (6.6 feet) into a rear yard (Schedule 'A'). As a result, a heat pump or air conditioning unit can be as close as 2.25 metres (7.4 feet) to a neighbouring home. These regulations have been in place since 1993 with the adoption of the current Zoning Bylaw. Although not specifically mentioned in the previous Zoning Bylaw (1982 – 1993) the bylaw did include an ability to have general projections into yard areas and could have been interpreted to include heat pumps or central air conditioning units.

#### ***Proposed Amendment***

In response to Council's direction, Staff has prepared a Zoning Bylaw Amendment Bylaw which, if adopted, will increase the required setback in side yards from 0.75 metres (2.5 feet) to 4.5 metres (14.76 feet). The Amendment Bylaw will also require the units to be placed to the rear of the home.

In response to this more restrictive siting, the Bylaw will also permit greater flexibility in the siting of these units in the rear yard by allowing the units to be sited 3 metres (9.8 feet) from the rear property line (Schedule 'A').

This amendment will require any new heat pump or central air conditioning unit to be a minimum of 4.5 metres (14.76 feet) from a neighbouring home and 6 metres (19.7 feet) in the majority of situations.

The amendment will also clarify that the setback does not apply to window-mount air conditioning units which will continue to be permitted to project from windows into side yards.

### ***Application***

If adopted, the revised Bylaw will apply only to the siting of new heat pumps or central air conditioning units. As these units do not require building permits, the owners / installers will be responsible to familiarize themselves with the Bylaw requirements, similar to fences or small accessory buildings. As previously directed by Council, Staff will be completing a community education program to educate suppliers, installers, builders and home owners regarding the siting of heat pumps and methods to minimize noise.

As per Council's policy, Staff will respond only to complaints regarding new, incorrectly sited units. Owners who have installed a unit which does not comply with the zoning setbacks, or those applicants who wish to install a unit within the required setbacks, can apply to the Board of Variance. The Board can legalize or permit a unit where, in their opinion, the Bylaw creates an undue hardship for the applicant.

### ***Public Hearing***

If Council gives First and Second Reading to the proposed Amendment Bylaw, the item will be forwarded to the next available Public Hearing in order to receive input from the community.

### **RECOMMENDATION:**

That Council give First and Second Reading to "ZONING BYLAW AMENDMENT BYLAW 2006 NO. 4000.394".

Respectfully submitted,



D. Lindsay  
Manager, Planning Division  
**DEVELOPMENT SERVICES DEPARTMENT**

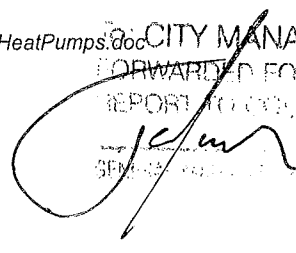


A. Tucker  
Acting Director, Planning & Development  
**DEVELOPMENT SERVICES DEPARTMENT**

DL/pm

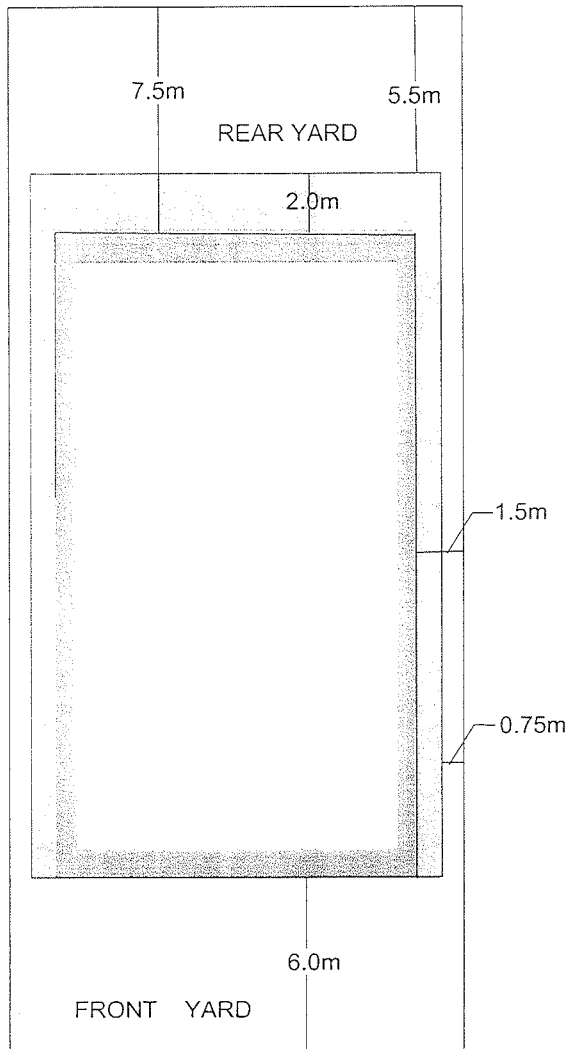
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**CITY MANAGER**  
FORWARDED FOR CITY MANAGER  
REPORT TO COUNCIL  
**DEVELOPMENT SERVICES**

## Typical Lot EXISTING



PERMITTED SITING

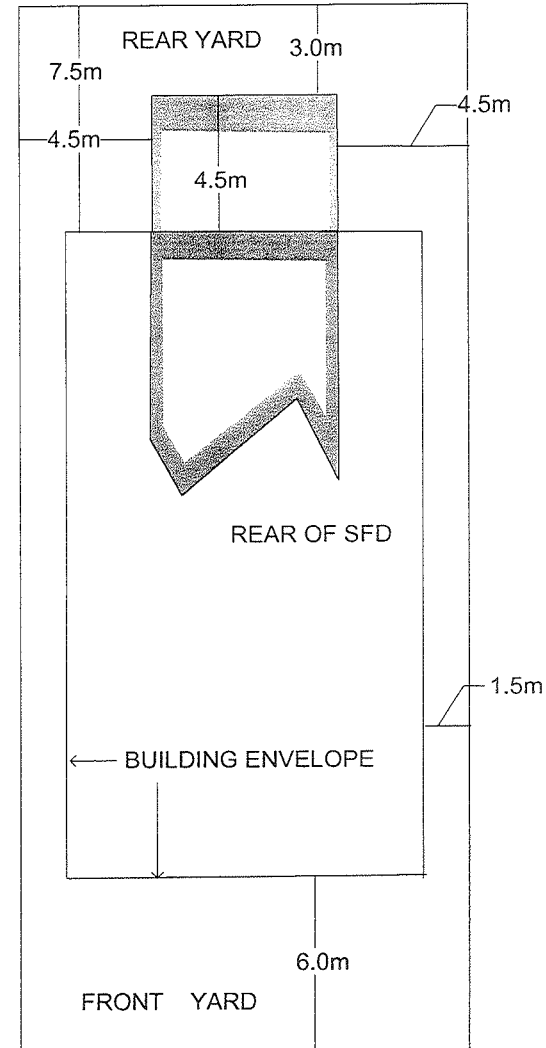


PERMITTED PROJECTION

-ALLOWS SITING AS CLOSE AS 2.25m (7.4')  
TO NEIGHBOURHOOD HOME

## PROPOSED

-MIN. 3.0m REAR YARD  
-MIN. 4.5m SIDE YARD



PERMITTED SITING



PERMITTED PROJECTION

-MINIMUM 4.5m (14.76') TO NEIGHBOURING HOME  
-ADDS FLEXIBILITY IN SITING AND DESIGN



( ) RA165 / 6202 Dunbar Road

The City has received an application from Keith Brown and Associates, on behalf of Crest Mobile Home Estates, to amend an existing covenant which was registered on title to the subject property as a condition of a previous rezoning application (RA92-28). The application has been reviewed by Staff and the Rezoning Advisory Committee and is now ready for Council's consideration.

As the covenant was registered as part of a previous rezoning, it is Council's policy that proposed amendments be forwarded to a Public Hearing. If Council indicates that it is prepared to consider the amendment the item will be scheduled for the 2006-JUL-06 Public Hearing.

The subject property is split-zoned Mobile Home Park Subdivision Zone (RM-8) and Low Density Multiple Family Residential (Townhouse) Zone (RM-3). The RM-3 portion, which is the subject of the proposed amendment, is approximately 1.36 hectares (3.36 acres) in area and is currently vacant. The subject property is designated as "Neighbourhood" according to Schedule 'A' of the Official Community Plan (OCP) which encourages a mix of housing forms and densities.

The subject portion of the site is bounded by a mobile home park to the north, agricultural property to the east, Pleasant Valley Elementary School to the south and Crest Mobile Home Park to the west

As a condition of the previous rezoning, Council directed that a covenant be registered on title to secure the following items on the RM-3 portion of the site:

- Density is limited to no more than 27 dwelling units;
- Lot coverage is limited to no more than 21%; and
- Construction of a 92.9 m<sup>2</sup> (1,000 ft<sup>2</sup>) recreation building, complete with washroom and kitchen facilities.

The applicants are proposing to amend the existing covenant in order to allow for three additional dwelling units, remove the 21% lot coverage restriction, and provide a \$30,000 monetary contribution towards the Oliver Road Recreation Centre in lieu of constructing an auxiliary building on-site.

The proposed development, if approved, would comply with the density and lot coverage requirements of the RM-3 Zone. A development permit will be required in order to evaluate the project details including siting, scale, landscaping and building materials.

At it's meeting of 2006-MAY-04, RAC recommended that the application be approved as presented.

Staff recommend that Council support the proposed covenant amendment and direct Staff to forward this item to the next regularly schedule Public Hearing in order to receive input with respect to amendments.

Recommendation: That Council support this application and direct Staff to forward this item to the next regularly scheduled Public Hearing.

2006-Jun-07

## FOR CITY MANAGER'S REPORT

REPORT TO: A. TUCKER, ACTING DIRECTOR, PLANNING & DEVELOPMENT, DSD

FROM: D. LINDSAY, MANAGER, PLANNING DIVISION, DSD

RE: RA165 / 6202 DUNBAR ROAD – COVENANT AMENDMENT

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### RECOMMENDATION:

That Council support this application and direct Staff to forward this item to the next regularly scheduled Public Hearing.

### BACKGROUND:

The City has received an application from Keith Brown and Associates, on behalf of Crest Mobile Home Estates, to amend an existing covenant which is currently registered on title to the subject property. The existing covenant was registered as part of a previous rezoning application (RA92-28) that was approved by Council at their meeting of 1995-JUN-26. The application has been reviewed by Staff and the Rezoning Advisory Committee and is now ready for Council's consideration.

As the covenant was registered as part of a previous rezoning, it is Council's policy that proposed amendments be forwarded to a Public Hearing. If Council indicates that it is prepared to consider the amendment the item will be scheduled for the 2006-JUL-06 Public Hearing.

### DISCUSSION:

#### ***Subject Property***

The subject property is split-zoned Mobile Home Park Subdivision Zone (RM-8) and Low Density Multiple Family Residential (Townhouse) Zone (RM-3). The RM-8 portion of the site is approximately 9.4 hectares (23.33 acres) in area and is the site of Crest Mobile Home Park Estates. The RM-3 portion, which is the subject of the proposed amendment, is approximately 1.36 hectares (3.36 acres) in area and is currently vacant.

The subject portion of the site is bounded by a mobile home park to the north, agricultural property to the east, Pleasant Valley Elementary School to the south and Crest Mobile Home Park to the west (Schedule 'A').

***Official Community Plan (OCP)***

The subject property is designated as "Neighbourhood" according to Schedule 'A' of the Official Community Plan (OCP) which encourages a mix of housing forms and densities.

***Existing Covenant***

As a condition of the previous rezoning, Council directed that a covenant be registered on title to secure the following items on the RM-3 portion of the site:

- Density is limited to no more than 27 dwelling units;
- Lot coverage is limited to no more than 21%; and
- Construction of a 92.9 m<sup>2</sup> (1,000 ft<sup>2</sup>) recreation building, complete with washroom and kitchen facilities.

***Proposed Development / Covenant Amendment******Density***

The applicant is proposing to amend the covenant in order to increase the permitted density from 27 townhouse dwelling units to 30 (Schedule 'B'). Under the RM-3 Zone density is not restricted to a specific number but rather is limited by a Floor Area Ratio (FAR) of 0.45.

The applicants are proposing townhomes in the range of approximately 158 m<sup>2</sup> (1,700 ft<sup>2</sup>). Based on the figure provided, the proposed development complies with the FAR requirements of the RM-3 zone.

***Lot Coverage***

In response to current market demands for larger townhomes, the applicants are proposing to remove the 21% lot coverage restriction. This will permit a development of up to 40% lot coverage, which is the maximum lot coverage in the RM-3 Zone. Based on the figures noted above, the proposed lot coverage is in compliance with the RM-3 zone.

***Recreation Facility***

It is the applicant's experience that common recreation buildings are seldom utilized by strata owners, yet they are still responsible for costs of maintenance to the building. In lieu of constructing the on-site recreational facility, the applicants have proposed a \$30,000 monetary contribution (\$1,000 per dwelling unit) towards the City's Oliver Road Recreation Centre.

**REZONING ADVISORY COMMITTEE (RAC)**

At its meeting of 2006-MAY-04, RAC recommended that the application be approved as presented.

**SUMMARY**

The applicants are proposing to amend the existing covenant in order to allow for three additional dwelling units, remove the 21% lot coverage restriction, and provide a monetary contribution towards the Oliver Road Recreation Centre in lieu of constructing an auxiliary building on-site.

The proposed development, if approved, would comply with the density and lot coverage requirements of the RM-3 Zone. A development permit would be further required in order to evaluate the project details including siting, scale, landscaping and building materials.

Staff recommend that Council support the proposed covenant amendment and direct Staff to forward this item to the next regularly scheduled Public Hearing in order to receive input with respect to amendments.

**RECOMMENDATION:**

That Council support this application and direct Staff to forward this item to the next regularly scheduled Public Hearing.

Respectfully submitted,



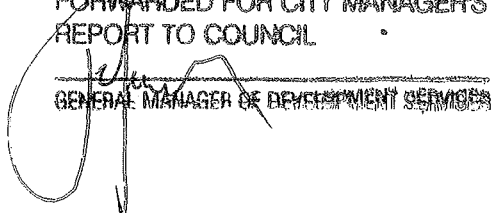
D. Lindsay  
Manager, Planning Division  
**DEVELOPMENT SERVICES DEPARTMENT**



A. Tucker  
Acting Director, Planning & Development  
**DEVELOPMENT SERVICES DEPARTMENT**

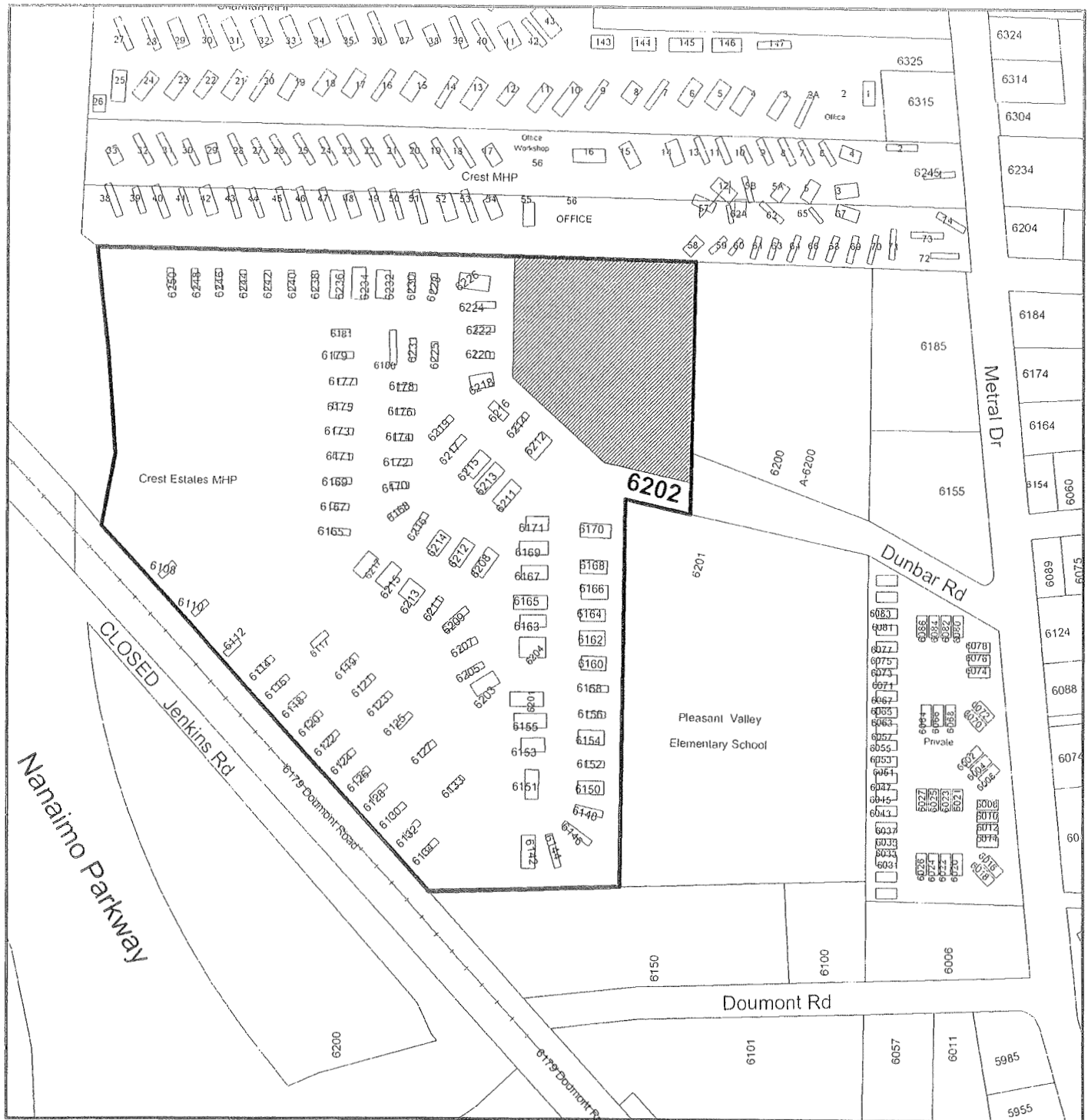
DL/pm  
Council: 2006-MAY-29  
Prospero: RA165

TO: CITY MANAGER  
FORWARDED FOR CITY MANAGER'S  
REPORT TO COUNCIL




GENERAL MANAGER OF DEVELOPMENT SERVICES


# SCHEDULE A



Civic : 6202 Dunbar Road  
File : RA000165



 SUBJECT  
PROPERTY

 Area of proposed  
Covenant amendment

## SCHEDULE B

